

**OCT 25 2005**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HECTOR RODRIGO SOTO,

Defendant - Appellant.

No. 04-50233

D.C. Nos. CR-03-00206-CJC-01  
CR-03-000189-CJC-01

MEMORANDUM<sup>\*</sup>

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HECTOR RODRIGO SOTO,

Defendant - Appellant.

No. 04-50234

D.C. Nos. CR-03-00189-CJC-01  
CR-03-00206-CJC-01

Appeal from the United States District Court  
for the Central District of California  
Cormac J. Carney, District Judge, Presiding

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Submitted October 21, 2005\*\*  
Pasadena, California

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Soto's sentence violates *United States v. Booker*, 125 S.Ct. 738 (2005), because the district court operated under the belief that the Federal Sentencing Guidelines are mandatory, rather than advisory. Because Soto did not challenge his sentence on this ground in the district court, we grant a limited remand pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). *See also United States v. Moreno-Hernandez*, No. 03-30387, slip op. at 18 (9th Cir. August 17, 2005) (holding that "defendants are entitled to limited remands in *all* pending direct criminal appeals involving unpreserved *Booker* error, whether constitutional or nonconstitutional.").

**REMANDED.**

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\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).